U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 17 2007

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and service company. It seeks to employ the beneficiary permanently in the United States as a software developer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a baccalaureate in computer science, engineering or business. The director also determined that the petitioner had not established that the beneficiary had five years of *progressive* experience.

On appeal, the petitioner provides a statement and submits new and previously submitted documentation. For the reasons discussed below, while we withdraw the director's finding that the petitioner's experience was not progressive, the petitioner has not overcome the director's valid concerns regarding the beneficiary's field of concentration.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The beneficiary possesses a foreign three-year Bachelor of Science degree in two parts: (1) English, Sanskrit, Indian Heritage and Culture and Science and Civilization and (2) Mathematics, Physics and Chemistry. The beneficiary then obtained a second Bachelor of Science (Technology) in "Oils, Soaps and Detergents." Both degrees are from Nagarjuna University in India. It is the petitioner's contention that the beneficiary has a Bachelor of Science in Engineering plus five years of progressive experience. The first issue is whether the beneficiary has five years of progressive experience that would qualify him as an advanced degree professional and the second issue is whether the beneficiary's education is sufficient to meet the job requirements of the proffered job as set forth on the alien certification.

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).[1]

The petitioner does not claim that the beneficiary has an advanced degree. Rather, it is the petitioner's contention that the beneficiary has a baccalaureate plus five years of progressive experience.

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991).

On appeal, the petitioner submits a new credentials evaluation from Dr. [redacted] at Morningside Evaluations and Consulting with the same date as a prior evaluation by Dr. [redacted] Dr. [redacted] asserts that while the beneficiary's second degree was awarded after only three years of study, he entered that program with "advanced standing" because of his previous three-year

[1] *But cf. Hoosier Care, Inc. v. Chertoff,* 482 F. 3d 987 (7th Cir. 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought here.

[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

degree. While two lesser degrees are not necessarily the equivalent of a U.S. baccalaureate, a degree earned in less than four years because of "advanced standing" due to previous college-level coursework may, on a case-by-case basis, be considered equivalent to a U.S. baccalaureate.[3] In this matter, the director did not contest that the second degree, a Bachelor of Science (Technology) was equivalent to a baccalaureate from an accredited U.S. university.

As evidence of the beneficiary's experience, the petitioner initially submitted a Service Certificate from [redacted] confirming the beneficiary's employment as a systems analyst from June 19, 2000 through July 16, 2004; a Certificate of Experience from Adroit Integrated Solutions confirming the beneficiary's employment as a programmer from June 26, 1997 through January 27, 2000 and a letter from R.S. Software confirming the beneficiary's employment as an associate software engineer from January 2000 to June 15, 2000. In response to the director's request for additional evidence, the petitioner submitted additional evidence from these employers, including evidence that the beneficiary was initially hired at Satyam Computer Services as a Senior Software Engineer (Level 4) and was promoted to a Systems Analyst (Level 5) as of October 1, 2003. The director concluded that only the beneficiary's experience at Satyam Computer Services was progressive and that his experience there was less than five years. The director failed to consider any progress from employer to employer. The above evidence clearly demonstrates that the beneficiary has progressed from a programmer to an associate software engineer to a senior software engineer to a systems analyst. We are satisfied that this employment is sufficiently progressive.

The next issue is whether the petitioner has demonstrated that the beneficiary meets the job requirements set forth on the ETA Form 9089. Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit ("Ninth Circuit") stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

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[3] We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). ACCRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.aacrao.org, EDGE is "a web-based resource for the evaluation of foreign educational credentials." EDGE reflects that a Bachelor of Technology from an Indian university is comparable to a U.S. baccalaureate.

*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

When determining whether a beneficiary is eligible for a preference immigrant visa, CIS may not ignore a term of the alien employment certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. CIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which CIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. CIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

In this matter, Part H, line 4, of the labor certification reflects that a Master's degree in "Computer Science or any engineering or business" is the minimum level of education required. Line 8 reflects that a combination of education and experience is also acceptable. Specifically, lines 8-A and 8-C reflect that a Bachelor's degree and five years of experience are acceptable in the alternative. Line 9 reflects that a foreign educational equivalent is acceptable.

As stated above, the beneficiary possesses a foreign three-year Bachelor of Science degree in two parts, neither of which includes computer science, engineering or business, and a second Bachelor of Science (Technology) in "Oils, Soaps and Detergents." The petitioner initially submitted an evaluation from Dr. [redacted] Dr.

[redacted] asserts that the petitioner's coursework towards his Bachelor of Science (Technology) included English, Oils, Soaps and Detergents, courses that are "normally required as part of the Bachelor of Science in Chemical Engineering at an accredited university in the United States." Dr. [redacted] concluded that that the beneficiary's education was equivalent to a Bachelor of Science in Engineering from an accredited university in the United States.

The beneficiary's transcript reflects the following engineering coursework towards his Bachelor of Science (Technology):

- Elements of Mechanical Engineering & Electrical Engineering
- Mechanical & Electrical Engineering Practicals
- Chemical Engineering Thermodynamics
- Chemical Engineering Unit Operation Lab
- Chemical Reaction Engineering

On February 9, 2007, the director requested evidence detailing the courses the beneficiary took and the time spent in those courses. In response, the petitioner submitted a new evaluation from Dr. [redacted] dated May 3, 2007. Dr. [redacted] asserts that the beneficiary's coursework towards his Bachelor of Science (Technology) included "Mechanical and Electrical Engineering, Chemical Engineering Thermodynamics, Chemical Reaction Engineering and related areas." Based on this coursework, Dr. [redacted] asserts that the beneficiary's Bachelor of Science (Technology) is the "equivalent of a *Bachelor of Science degree in Engineering* from an accredited institution of higher education in the United States." (Emphasis in original.)

The director concluded that the beneficiary's engineering coursework amounted to no more than a semester. On appeal, the petitioner notes that the ETA Form 9089 only requires a degree in any field of engineering and that the evaluations have established that the beneficiary meets this requirement. The petitioner submits a second evaluation from Dr. [redacted] also dated May 3, 2007 reiterating his previous his previous conclusion. This evaluation does not address the director's explicit concern that the beneficiary's credits in engineering are less than the number of credits required for an engineering degree in the United States. Specifically, Dr. [redacted] does not indicate the number of credits in engineering required for Bachelor of Science in Engineering in the United States and compare the beneficiary's coursework with those requirements.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The evaluations from Dr. [redacted] and Dr. [redacted] are not consistent with the beneficiary's transcript, which documents only a few engineering courses. Moreover, the petitioner has not submitted an evaluation that is responsive to the director's legitimate request for a detailed analysis of the beneficiary's coursework and credit hours. Without a detailed comparison of the beneficiary's credits with the number of credits normally required for a Bachelor of Science in Engineering in the United States, we cannot conclude that the beneficiary's Bachelor of Science (Technology) in Oils, Soaps and Detergents is equivalent to a Bachelor of Science in Engineering from an accredited university in the United States. Thus, the beneficiary does not have the education required for the certified job as set forth in Part H of the ETA Form 9089.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER**: The appeal is dismissed.